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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/705,441	11/02/2000	Lev Smorodinsky	041-479-L	7696

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EXAMINER

TRUONG, LECHI

ART UNIT	PAPER NUMBER
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2126

DATE MAILED: 03/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/705,441

Applicant(s)

SS

Examiner

LeChi Truong

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 November 2000.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

1. Claims 1-11 are presented for examination.

Double Patenting

A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

2. Claim 1-11 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 27 of copending application Serial No. 09/474,706 (Patent application)(in view of Lev Somorodinsky, patent no. 6,571,283 B1). Although the conflicting claims are not identical, they are not patentably distinct from each other because both methods for server configuration optimization comprise substantially the same element. The differences between the patent application and this case are more limitations: "selecting for input said particular number of clients "n" for utilizing said server Farm; selecting for input one parameter for said single Server Farm cost evaluation; selecting for input one parameter for said down-time cost evaluation" and " said single Server Farm cost evaluation; said downtime cost evaluation; said sever Farm optimization parameter" (e.g note lines 14-19 and ln 24-27) .

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Primak et al (US. Patent 6,389,448 B1) in view of Adelman et al (US. Patent 6,006,259).

4. As to claim 1, Primak teaches the invention substantially as claimed including: an estimator program (the loading balancing module 12, col 4, ln 34-59), estimating parameters of the optimum operating server Xfarm(compares the connection value of a given SYN Packet to respective assigned sub-range of connection value, col 4, ln 34-59), a particular large number of clients L (the client computers 60, col 4, ln 1-25), inputting (input/ pass, col 3, ln 53-62), a group of parameters (the server's the availability information , col 4, ln 6-45/ col 5, ln 1-20/a potion of every SYN Packet as an input, col 3, ln 50-67/ col 4, ln 34-66), one server Xfarm Parameter(the server's assigned sub-range , col 4, ln 46-62), one single server (server, col 4, ln 46-62), selecting one server Xfarm optimization parameter(if the connection value of the SYN Packet is within the server's assigned sub-range, the associated loading balancing module 12 forwards the SYN packet , col 4, ln 46-62), it domain(a range of connection for each SYN packet, col 4, ln 35-46), the value(from 0 to 32,000), a server Xfarm optimization criterion that is a function(the pseudo-random number generation function is characterized by an event probability distribution over a fixed range of values , col 3, ln 55-67 to col 4, ln 1-5), an optimization technique(the

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network load balancing system which is highly scalable and optimizes packet , col 2 ,ln 25-32), the optimum value(about 30% of all connection being accepted by that server, col 5, ln 10-20).

5. Primak does not explicit teach Xfarm as Metafarm. However, Adelman teaches X Farm (a plurality of cluster members, col 2, ln 62-68/each cluster member / determine where a cluster member is to process a particular message or not, col 2, ln 20-30).

6. It would have been obvious to one of the skill in the art at time the invention was made to combine the teaching of Primak and Adelman because Adelman's each cluster member would provides a highly scalable system which optimizes message throughput by the processing load balancing over all present cluster members.

7. **As to claim 2**, Primak teaches particular number of client "L", (number of concurrent processes or tasks being performed, col 4, ln 10-20), a maximum single server workload of uses (the server's processing, repair value/ failure for a single server (the server processing (or CPU) capacity, CPU load, the number of existing connections, col 4, ln 10-20).

8. **As to claim 3**, Primak teaches a number of Server Farm, the number of servers (number of concurrent processes or tasks being performed, col 4, ln 10-20).

9. **As to claim 4**, Primak teaches a Redundancy Factor having a domain interval between of and 100 percent (the entire range that could result in about 30%, col 5, ln 10-20).

10. **As to claim 5**, it is an apparatus claim of claim 3, 4; therefore, it is rejected for the same reasons as claims 3, 4 above.

11. **As to claim 6**, Primak teaches the server MetaFarm Time to Failure (the server processing (or CPU) capacity, CPU load, the number of existing connections, col 4, ln 10-20).

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12. As to claim 7, Primak teaches the server MetaFarm availability (the availability information of its associated server, col 4, ln 27-40).

13. As to claim 8, Primak teaches the Redundancy Factor that should be minimized (the entire range that could result in about 30% of the connection values falling within that server's sub-range, col 5, ln 10-20), the server Metafarm Mean time to failure value (the server processing (or CPU) capacity, CPU load, the number of existing connections, col 4, ln 10-20).

14. As to claim 9, it is an apparatus claim of claim 8; therefore, it is rejected for the same reasons of claim 8 above.

15. As to claim 10, Primak teaches a value of said optimization parameters from said domain (value from 0-32,000, col 4, ln 39-68), a value for said optimization criterion (assigned a sub-range whose size would be about 30%, col 5, ln 25-20), making an evaluation decision (if the connection value of the SYN packet is within the server's assigned range, col 4, ln 50-60).

16. As to claim 11, Primak teaches the decision to stop the procedure if the number of server farms in the configured server Metarfarm is determined (if the connection value of the SYN packet is within the server's assigned sub-range, the associated load balancing module 12 forward the SYN packet to the server accepts the connection request from the client, col 4, ln 50-60).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LeChi Truong whose telephone number is (703) 305 5312. The examiner can normally be reached on 8 - 5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Meng-Ai An can be reached on 703-305-9678. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIP. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIP system, contact the Electronic Business Center (EBC) at 866-217-9197(toll-free).

LeChi Truong

March 19, 2004


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